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September 20, 2013

Ms. Susan M. Cosper Technical Director Financial Accounting Standards Board 401 Merritt 7 PO Box 5116 Norwalk, CT 06856-5116

File Reference No. 2013-310

Dear Ms. Cosper:

McGladrey LLP appreciates the opportunity to comment on the Proposed Accounting Standards Update, *Definition of a Public Business Entity: An Amendment to the Master Glossary* (the "proposed Update"). While we commend the Board's efforts to establish a single definition of a public business entity, we are concerned that the definition provided is too broad and as currently proposed may have unintended consequences. Specifically we are concerned that many more entities than the Board initially contemplated may meet the criterion in item e. of the proposed definition, which would require an entity to be considered a public business entity if the entity's "securities are unrestricted, and it is required to provide U.S.GAAP financial statements to be made publicly available on a periodic basis pursuant to a legal or regulatory requirement". We recommend that the Board consider eliminating or revising this and certain of the other criteria identified in the proposed definition of a public business entity and that the Board provides further guidance on the application of the criteria. We elaborate further on this and other matters in our responses to the "Questions for Respondents" and our other comments and suggestions included below for your consideration.

Comments on Certain Questions for Respondents

Question 1: Please describe the entity or individual responding to this request.

McGladrey LLP is a national CPA firm that serves hundreds of public companies and thousands of private companies in a variety of industries. We focus primarily on serving middle market companies and public sector entities.

Question 2: Do you agree with the definition of a public business entity included in this proposed Update? Please explain why.

As previously expressed, we believe the proposed definition requires additional revision and clarification. We suggest the following:

In regards to item a. in the proposed definition, "It is required by the U.S. Securities and Exchange Commission (SEC) to file or furnish financial statements, or does file or furnish financial statements, with the SEC (including other entities whose financial statements or financial information are required to be or are included in a filing)":

• We ask the Board provide further clarification on the distinction between *filing* financial statements and *furnishing* financial statements. We are concerned that as currently drafted

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entities which had been considered nonpublic, such as Registered Investment Advisors that furnish an audited balance sheet with Form ADV filed with the SEC and depositors that furnish financial statements with the SEC under Item 23(b) of Form N-4 or Item 24(b) of Form N-6, will be scoped into the public business entity definition.

• The Board should clarify their intention as expressed in the "Summary and Questions for Respondents" that a consolidated subsidiary of a public company would not be considered a public business entity for purposes of its standalone financial statements not included in an SEC filing. This intent is not clear under item a. in the proposed definition. Rather, the phrase "including other entities whose financial statements or financial information are required to be or are included in a filing" may lead to the conclusion that a private company that is a consolidated subsidiary of a public company meets the definition of a public business entity due to the fact that they are part of the consolidated entity or potentially have specific financial information included in segment or other footnote disclosures. We would recommend the wording from the summary actually be included in the definition.

In regards to item d. in the proposed definition, "It has (or is a conduit bond obligor for) unrestricted securities that are traded or can be traded on an exchange or an over-the-counter market":

- We believe this criterion is too vague and could result in too broad an application. Further clarity of what should be considered as "unrestricted securities" is needed; in paragraph BC18 of the proposed Update unrestricted securities are described as those that "can be resold to the public without the company's control and generally have an active market". While we believe the first element of this description is intuitive, that unrestricted securities can be resold without the company's control, it would be helpful if the Board elaborated upon the second element, that those securities generally have an active market. Also, any guidance included in paragraph BC18 necessary to apply the unrestricted concept should be included within the definition. Finally, consideration should be given to the effect a temporary restriction on a security should have (i.e. would they be considered restricted or unrestricted and if they are restricted would the company switch from nonpublic to public when the restriction is removed or expires?).
- We also recommend that "can be traded" be eliminated from the criterion. If the Board continues to include the phrase, it would be helpful to clarify what that phrase means. For example does the Board intend to only include situations where the stock is listed on an exchange or traded in an over-the-counter market but for whatever reason is not being traded, or does the Board also intend to include companies that are currently not listed on an exchange or traded over the counter but have the ability to list their shares or participate in an over-the-counter market?
- Community banks and thrifts with securities that are or can be traded on an over the counter market that do not file with the SEC or bank regulator under the '34 Act, currently do not consider themselves to be "public". Does the Board intend the past practice for them and other similar entities to be changed?

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In regards to item e. in the proposed definition, "Its securities are unrestricted, and it is required to provide U.S. GAAP financial statements to be made publicly available on a periodic basis pursuant to a legal or regulatory requirement":

• We recommend the Board eliminate item e. from the public business entity definition. As previously expressed, we believe the criterion in item e. is so broad that it may scope into the definition of a public business entity many entities currently considered to be nonpublic. We are specifically concerned that there may be far more instances than the Board has considered in its deliberations where entities are required to make publically available its financial statements pursuant to a regularly requirement. Provided those entities have unrestricted securities, they would be considered under the proposed definition to be a public entity. For instance, banks with over \$500 million in assets are required to file their annual audited financial statements with the FDIC. Further, many other entities may be subject to filing requirements with state regulatory agencies or be subject to other legal reporting requirements. We suggest the Board carefully consider the different circumstances in which an entity may be required to provide U.S. GAAP financial statements to be made publicly available on a periodic basis pursuant to a legal or regulatory requirement and whether it was the Board's intent that such entities be scoped into the definition of a public business entity.

If the Board does decide to retain this criterion, we believe that further guidance around "publicly available" should be provided. We also recommend the Board clarify that only filing requirements for full U.S. GAAP financial statements, not just financial information prepared in accordance with U.S. GAAP (such as in a Call Report required to be filed by all federally insured depository institutions), be considered.

Question 3: Do you agree that a business entity that has securities that are unrestricted and that is required to provide U.S. GAAP financial statements to be made publicly available on a periodic basis pursuant to a legal or regulatory requirement should be considered a public business entity? Please explain why. Can you identify a situation in which an entity would meet this criterion but would not meet any of the other criteria identified in the definition of a public business entity? In addition to what is discussed in paragraph BC18 of this proposed Update, do you think further clarification is needed to determine what an unrestricted security is?

As previously discussed, we do not believe a business entity that has securities that are unrestricted and that is required to provide U.S. GAAP financial statements to be made publicly available on a periodic basis pursuant to a legal or regulatory requirement should be considered a public business entity. Please refer to our response to Question 2 for further discussion of this specific criterion and the unrestricted security concept. Situations in which an entity would meet this criterion but not any others could be when there are state regulatory or legal reporting requirements. Examples of this would include financial institutions, franchisors and certain utility companies in states which require such entities to file their audited financial statements.

Question 4: Do you agree that no public or nonpublic distinction should be made between NFPs for financial reporting purposes? Instead, the Board would consider whether all, none, or only some NFPs should be permitted to apply accounting and reporting alternatives within U.S. GAAP. Please explain why.

We agree that no public or nonpublic distinction should be made between NFPs. We do not believe it is appropriate to treat all NFPs as public entities, even given the public accountability of many of these entities. It has been our experience that most NFPs are not similar to entities traditionally considered to be public, such as SEC filers, and inclusion in the public definition would not be appropriate. We agree with the Board's decision to consider on a standard-by-standard basis whether

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> exceptions should be allowed for some, all or no NFPs. We suggest the Board work closely with Notfor-Profit Advisory Committee in this consideration.

Question 5: Should the Board consider whether to undertake a second phase of the project at a later stage to examine whether to amend existing U.S. GAAP with a new definition resulting from this proposed Update? In that second phase of the project, the Board would consider whether to (a) preserve the original scope of guidance in the Accounting Standards Codification or (b) change the scope of guidance in the Accounting Standards Codification to align with the new definition. Please explain why.

We encourage the Board to immediately undertake a second phase to consider amending existing U.S. GAAP to eliminate the complexity resulting from multiple definitions of public and nonpublic entities existing in current U.S. GAAP. For example, the master glossary currently contains five different definitions of nonpublic entity. At a minimum, we recommend the Board amend existing public entity definitions to exclude NFPs and employee benefit plans in a manner consistent with the proposed definition.

Other Comments and Suggestions

Transition

While we understand the proposed Update does not affect existing requirements, rather the proposed definition will be used in specifying the scope of future accounting and reporting guidance, we believe the Board, in providing alternative accounting treatment for private entities, will need to continue to address and provide guidance on transition in instances in which circumstances change and an entity that does not currently meet the public business entity definition meets the public business entity definition at a future date. For example, transition guidance would be necessary for a private entity that has adopted an alternative accounting treatment and is subsequently acquired by a public company and their financial statements are required to be furnished under Rule 3-05 of Regulation S-X.

We would be pleased to respond to any questions the FASB or its staff may have concerning our comments. Please direct any questions to Rick Day (563.888.4017) or Ginger Buechler (612.455.9411). Sincerely,

McGladrey LCP
McGladrey LLP